

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF MISSISSIPPI

IN RE: JAMES J. PITTMAN, JR.,  
DEBTOR

CASE NO. 02-10181

ORDER

On consideration before the court is the objection filed by the Chapter 7 trustee, Jacob C. Pongetti, to the amended claim of exemptions scheduled by the debtor, James J. Pittman, Jr.; memorandum briefs having been received from the trustee, the debtor, and amicus curiae, Julie Ratliff Galloway and Selene D. Maddox; and the court, having considered same, hereby finds, orders, and adjudicates as follows, to-wit:

I.

The court has jurisdiction of the parties to and the subject matter of this contested proceeding pursuant to 28 U.S.C. §1334 and 28 U.S.C. §157. This matter would be considered a core contested proceeding as defined in 28 U.S.C. §157(b)(2)(A) and (B).

II.

In his memorandum brief, the trustee listed the following factual events which appear to be uncontested, to-wit:

1. On December 28, 2000, the debtor's mother, Delphia H. Pittman, departed this life while a resident at Greenbough Nursing Center.
2. Thereafter, a petition to probate the last will and testament of Delphia H. Pittman was filed in the Chancery Court of Coahoma County, Mississippi, case number 2001-230.

3. As a result of Mrs. Pittman's death, on October 15, 2001, a lawsuit was filed by Linda P. Edwards, individually, and as executrix of the estate of Delphia H. Pittman, deceased, Renee P. Moore, James J. Pittman, Jr., and Judy P. King, in the Circuit Court of Coahoma County, Mississippi, against Pensacola Health Trust, Inc., d/b/a Greenbough Nursing Center #823, et al, case number 14-C1-01-0106, alleging negligence resulting in the death of Mrs. Pittman.

4. On January 11, 2002, the debtor filed his Chapter 7 bankruptcy petition.

5. The debtor's original Schedule B did not disclose or value the lawsuit filed as a result of the death of Mrs. Pittman.

6. On February 13, 2002, there being no property available for distribution to the creditors of the debtor's bankruptcy estate, the trustee filed his report of no distribution.

7. On April 25, 2002, the discharge of the debtor was entered.

8. On May 17, 2002, an order closing the estate was entered.

9. On August 22, 2002, Linda P. Edwards, as executrix of the estate of Delphia H. Pittman, filed a petition seeking the approval of the settlement of the circuit court litigation in the Chancery Court of Coahoma County, Mississippi.

On August 27, 2002, the Chancellor entered an order approving the settlement. (This was entered nunc pro tunc May 31, 2002.)

11. On August 29, 2002, the debtor's attorney advised the trustee that the debtor was due to receive assets from the lawsuit involving the death of his mother.

12. On August 30, 2002, the trustee filed his motion to reopen the bankruptcy case.

13. On September 4, 2002, the case was reopened.

14. On September 10, 2002, the debtor filed an amended Schedule B and Schedule C.

15. On September 24, 2002, the trustee filed his objection to the amended exemption claims.

The court would only add that in addition to the above events, on June 19, 2002, the judge presiding over the litigation pending in the Circuit Court of Coahoma County, Mississippi, entered a final judgment of dismissal with prejudice recognizing that the cause of action had been fully compromised and settled. This judgment acknowledged that the plaintiffs had received full accord and satisfaction for their claims, as well as, that the settlement had been approved by the Chancery Court of Coahoma County, Mississippi.

### III.

The issues of law have been appropriately framed by the parties as follows:

1. Does §85-3-17, Miss. Code Ann., allow the debtor to exempt \$10,000.00 from the settlement of a lawsuit?

2. Does §85-3-17, Miss. Code Ann., allow the debtor to exempt proceeds received from a lawsuit related to injuries to his mother, not himself?

3. Is the debtor estopped from amending his exemptions?

### IV.

Section 85-3-17, Miss. Code Ann., the Mississippi personal injury exemption statute, provides as follows:

The proceeds of any judgment not exceeding ten thousand dollars (\$10,000.00) recovered by any person on account of personal injuries sustained, shall inure to the party or parties in whose favor such judgment may be rendered, free from all liabilities for the debts of the person injured.

While the law is abundantly clear in the State of Mississippi that exemptions statutes are to be liberally construed in favor of the exemptionist, a decision as to whether an individual can effectively utilize the aforementioned statute is controlled by the specific facts of the proceeding. In the matter before this court, there was a lawsuit initiated in the Circuit Court of Coahoma County, Mississippi, which was ultimately settled by the payment of substantial sums of money to the plaintiffs. Coexisting with the circuit court litigation was the probate proceeding in the Chancery Court of Coahoma County, Mississippi, styled, “In the Matter of the Estate of Delphia H. Pittman, Deceased, Cause No. 2001-230, Linda P. Edwards, Executrix.” Once the circuit court litigation was settled, a petition for approval of the settlement was filed in the chancery court. Thereafter, an order approving the settlement was entered in the chancery court calling for the distribution of the following proceeds: \$104,950.30 to Attorneys Chapman, Lewis, and Swan for attorneys’ fees and expenses; \$786.74 to the Division of Medicaid; \$5,912.44 to Medicare; and \$56,462.63 to each of the wrongful death beneficiaries, Linda P. Edwards, Judy P. King, Renee F. Moore, and James J. Pittman, Jr. The order, although dated August 27, 2002, was entered nunc pro tunc May 31, 2002, because the petition in the matter had been inadvertently misplaced. After the settlement had received chancery court approval, a final judgment of dismissal with prejudice was entered in the circuit court cause of action.

The court recognizes that the aforementioned Mississippi personal injury exemption statute was enacted by the Mississippi Legislature in 1914, and, perhaps, is in need of a bit of attention to address the voluminous proceedings that are now being filed in the courts of this state, many of which are resolved through various forms of dispute resolution processes, including negotiated settlements. Regardless, in the matter presently before this court, this is not

a difficult decision, particularly when the statute is liberally construed. The order approving the settlement in the chancery court, awarding a sum certain to the debtor, coupled with the companion judgment of dismissal in the circuit court, recognizing the settlement, as well as, the satisfaction of the claims, have the effect of a “judgment” as contemplated by the exemption statute. Had there been no court order and no judgment, this matter certainly could have been more problematic.

#### V.

Whether the debtor can exempt proceeds from a lawsuit related to the wrongful death of his mother is a question that cannot be answered at this time. The court notes that the plaintiffs alleged in their circuit court complaint that they had all suffered “loss of support, society, love, companionship, and service,” resulting from their mother’s wrongful death. These allegations could obviously underpin personal injury claims such as mental anguish, emotional distress, etc. The court notes that the debtor received \$56,462.63, as his portion of the settlement proceeds, and is claiming the statutory maximum exemption in the sum of \$10,000.00. Whether he should be allowed the full statutory exemption amount, or a portion thereof, must be determined through an evidentiary hearing which will be scheduled subsequently.

#### VI.

The trustee contends that the debtor should be estopped from amending his schedules and asserting a claim of exemption in the settlement proceeds. He argues that the debtor concealed this contingent asset while his bankruptcy case was being administered. This position ignores the fact that once the debtor became aware that he would receive proceeds from the litigation that he advised the trustee, and the trustee filed a motion to reopen the case so that the newly acquired

asset could be administered. The court recognizes that, although the circuit court case was obviously pending, it was not finally settled until after the debtor's bankruptcy case was closed. Whether the debtor knew, or should have known, that he was going to receive proceeds from the litigation is presently unknown to the court. Regardless, since the case has now been reopened and none of the proceeds from the settlement have been misappropriated, there appears to be little prejudice to the trustee, only the inconvenience of reopening the case. Unless the court is seriously misinformed, it would appear that the trustee, even if the exemption claim is fully allowed, will be the recipient of approximately \$46,462.63, the non-exempt portion, which can be paid to the creditors of this estate. It goes without saying that the trustee would have had a much more difficult time in attempting to recover these proceeds had the debtor not been forthcoming when the settlement proceeds were distributed.

The court acknowledges that the law is abundantly clear that a debtor can freely amend exemption claims at any time. However, since the trustee has raised the question that the debtor may have intentionally concealed his prospects of receiving funds from the on-going circuit court litigation, the court is compelled to resolve this issue through an evidentiary hearing, particularly since one is already necessary to determine the extent, if any, of the debtor's personal injury exemption.

It Is, Therefore, Ordered and Adjudged as follows:

1. The settlement proceeds received by the debtor in the sum of \$56,462.63, resulted from the order approving settlement entered in the Chancery Court of Coahoma County, Mississippi, as well as, the judgment of dismissal with prejudice entered in the Circuit Court of Coahoma County, Mississippi. The combined effect of the order and the judgment of dismissal

constitutes a “judgment” as that term is contemplated in §85-3-17, Miss. Code Ann. As such, if the debtor can establish that these funds constitute compensation for personal injuries that he sustained, as well as, that he did not willfully conceal the possibility of receiving these proceeds from the Chapter 7 trustee or this court, then he may claim such qualifying proceeds as exempt.

2. The court will schedule an evidentiary hearing to consider what part of the settlement proceeds resulted from personal injuries sustained by the debtor.

3. The court will conduct an evidentiary hearing to determine if the debtor willfully concealed the possibility of receiving proceeds from the pending litigation initiated in the Circuit Court of Coahoma County, Mississippi.

ORDERED and ADJUDGED this the 21st day of January, 2003.

\_\_\_\_\_/s/\_\_\_\_\_  
DAVID W. HOUSTON, III  
UNITED STATES BANKRUPTCY JUDGE